

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

AUBREY MAYSHACK §
v. § CIVIL ACTION NO. 6:09cv424
JERRY ROGERS §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Aubrey Mayshack, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Mayshack complains that an officer named Jerry Rogers used excessive force on him on June 27, 2008. The Court ordered Mayshack to pay an initial partial filing fee of \$10.00, in conformity with 28 U.S.C. §1915(b). In response, Mayshack sent a letter saying that he was paying the fee, and enclosed a copy of a check stub from a magazine called Men's Fitness, which stated that they were refunding him the sum of \$12.00. The check stub is not itself a negotiable instrument and in any event is addressed to Mayshack and not the Court, and so it did not satisfy the requirement of payment of the initial partial filing fee.

On January 13, 2010, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court. On January 25, 2010, Mayshack filed a motion for extension of time, saying that he needed 30 days to obtain additional documents. Since that time, Mayshack has not filed any additional documents nor

shown cause for his failure to pay the initial partial filing fee despite having had ample time in which to do so. He also did not file any objections to the Report of the Magistrate Judge; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. It is further

ORDERED that any and all motions which may be pending in this lawsuit are hereby DENIED.

SIGNED this 25th day of March, 2010.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE